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CHARLES ELMORE CROPLE
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Supreme Court of the United States

OCTOBER TERM, 1949

No. 146

ALCOA STEAMSHIP COMPANY, INCORPORATED, CUNARD WHITE STAR LIMITED, NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, JOHN W. McGRATH CORPORATION, and THE JARKA CORPORATION,

Petitioners,

—against—

JOSEPH McMAHON, as President, MARTIN J. LYNCH, as Secretary and HAROLD COMERFORD, as Business Agent of LOCAL 895, PETER O'SHEA, as President, WILLIAM P. LYNCH, as Secretary and JAY O'CONNOR and JOHN J. SAMPSON, as Business Agents of Local 791, and JOHN HARTNETT, as President, PATRICK KEANE, as Secretary, and JOHN SULLIVAN, as Business Agent of LOCAL 1258 of the International Longshoremen's Association, and

LOCAL 895, LOCAL 791, and LOCAL 1258 of the International Longshoremen's Association, a labor organization affiliated with the American Federation of Labor,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

ABRAHAM M. FISCH,
Attorney & Counsel for Respondents,
No. 225 Broadway,
Borough of Manhattan,
City of New York.

HIGGINS & HIGGINS, INC., PRINTERS, 45 NEW CHAMBERS ST., N. Y.

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Statement

Petitioners seek injunctive relief against the Respondents, union officials and members of such Union to prevent the continuation of the refusal on the part of the

members to comply with one of the provisions of a collective bargaining agreement.

The petitioners claim that in view of the fact that the issues comprising the labor dispute between the parties came on for trial before Hon. John C. Knox in the United States District Court for the Southern District of New York, and Judge Knox rendered a judgment in favor of the plaintiffs (Record, pages 25, 26, 47, 48, 49, 50 and 51), that for that reason it is claimed that the issues having been adjudicated, a labor dispute no longer exists. The respondents respectfully disagree with such a conclusion.

POINT I

Where a declaratory judgment in a labor dispute is rendered in favor of the employer, the District Court has no jurisdiction by injunction to force compliance with the terms of the declaratory judgment.

The petitioners claim that once a labor dispute is decided by a Court of competent jurisdiction in favor of the employer, it then ceases to be a labor dispute and an injunction may lawfully be issued to compel compliance with the terms of the judgment.

A portion of the findings of fact and conclusions of law signed by Honorable John C. Knox, on May 18th, 1948, paragraph 11 of the findings of fact which appears at folio 144 of the Record on Appeal, reads as follows:

"11—The orders directing twelve men in the gang of twenty men to enter the hold were disobeyed because defendants claimed that the gang of twenty men could not be distributed in any ratio except 8 men on the dock, 8 men in the hold and 4 men on deck."

Reading the above finding of fact by Judge Knox is convincing proof that the issues tried before Judge Knox concern a labor dispute.

Counsel for the respondents will content himself in quoting portions of the opinion of Hon. Simon H. Rifkind, District Judge for the Southern District of New York, and the opinion of the Court of Appeals in this matter in support of the position taken by the respondents that injunctive relief may not be granted in the case at bar.

Judge Rifkind at folio 150 of the Record on Appeal states:

"A collectively bargainized agreement is in effect between the longshoremen represented by the International Longshoremen's Association, and their employers. The construction of one of its provisions having come into question, it was resolved in an action for a declaratory judgment by a decree which adjudicated that, under the agreement, the employers had the right to assign more than eight men, out of a gang of twenty, for work inside the hold of a vessel in loading or unloading operations.

Despite the provision of the agreement, notwithstanding the adjudication and in defiance of the instructions of union officers, a number of the members of three locals subject to the agreement have refused to abide by their obligations thereunder."

At folios 161 to 166 of the Record on Appeal Judge Rifkind states:

> "The petition asks for injunctive relief in aid of the declaratory judgment. The precise character of the relief requested, as modified upon the argument, is as follows:
>
> That an injunction issue
>
> 1. restraining the union officials from ratifying such disobedience on the part of the members.
>
> 2. restraining the individual members from refusing, so long as they are in the plaintiffs' employ, to obey the direction to work as directed.
>
> 3. restraining the union from receiving the dues of the recalcitrant members and conferring upon them any union benefits.
>
> 4. restraining the recalcitrant members from working in the longshore industry anywhere in the Port of New York for so long as they continue to disobey.
>
> The problem is urgent. Its social and industrial implications evoke a keen desire on the part of at least one judge to be the architect of a successful solution. Reluctantly I have concluded that federal judicial action is precluded. The Norris-LaGuardia Act provides, Title 29, U. S. C. A., Sec. 104:
>
> 'No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute

to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a)" Ceasing or refusing to perform any work or to remain in any relation of employment; * * *

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefit or insurance, or other monies or things of value; * * *

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103 of this title.'

That this is a labor dispute, a disagreement over the terms and conditions of the longshoremen's employment is indisputable. Equally indisputable is it that the requested relief is barred by the express restriction of the Act. Consequently, the relief sought cannot be granted unless the Taft-Hartley Act has changed the rules. I do not think that it has."

The opinion of the Court of Appeals for the Second Circuit appears in 173 Fed. (2), page 567, and is as follows:

"On appeal from an order of the District Court for the Southern District of New York, denying a motion for a preliminary injunction in execution of an earlier declaratory judgment against the defendants.

(fol. 65) C. V. Cherbonnier for the appellants;

Abraham M. Fisch for the appellees.

Per Curiam:

The plaintiffs wish to enjoin rebellious members of a union, who refuse to obey the orders of their employers and of the high officers of the union itself. That the defendants are in default has been established by a declaratory judgment of the district court; they have been adjudged wrongdoers because, although they agreed to be employees, they refuse to carry out the contract of employment. The only question is as to the employers' remedies for this breach of contract. That they may recover judgment from the defendants for damages is undoubted; that they may recover a similar judgment against the union is conceivable; that they could have procured an injunction in some form before the Norris-LaGuardia Act, we will assume, although, even before that act was passed, it would not have been possible to get all the relief here asked. But all this is beside the point. Their position is that, because Knox, J. decided the issues against the defendants, their refusal to obey that judgment did not raise a 'labor dispute', as that term is defined in Par. 113 (c) of the act. The defendants' position is that, in spite of the declaratory judgment, the refusal raised a 'controversy concerning the terms and conditions of employment', which by definition is a 'labor dispute'. We agree

with the defendants. If the plaintiffs were right, it would follow that, as soon as any controversy was decided by a court, it would (fol. 66) cease to be a 'controversy', and an injunction would be proper. It would therefore follow that the Norris-LaGuardia Act only applies to a 'labor dispute' before it had been decided; in short, an employer could not get a temporary injunction, but he could always get a permanent injunction. Order affirmed."

CONCLUSION

It is respectfully suggested that the petition for a writ of certiorari be denied.

Respectfully submitted,

ABRAHAM M. FISCH,
Attorney & Counsel for Respondents,
No. 225 Broadway,
Borough of Manhattan,
City of New York.